



# City of Carmel

## **Carmel Board of Zoning Appeals Regular Meeting Monday, May 22, 2006**

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 6:00 PM on Monday, May 22, 2006, in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were Kent Broach, James Hawkins, Earlene Plavchak, Alan Potasnik and Madeleine Torres, thereby establishing a quorum. Angie Conn and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mrs. Torres moved to approve the minutes of the April 24, 2006 meeting as submitted. The motion was seconded by Mrs. Plavchak and **APPROVED 4-0.**

Mr. Molitor stated there was no new litigation. If litigation is filed, an Executive Session may need to be scheduled before next month's regular meeting.

### **H. Public Hearing:**

#### **1h. Wal-Mart (Gateway Pavilion)**

The applicant seeks approval for the following Development Standards Variance:

**Docket No. 06030013 V ZO Chapter 23C.08.02.B maximum 120-ft building setback line**

The site is located at 10950 N Michigan Rd. and is zoned B-3/Business within the US 421/ Michigan Corridor Overlay Zone.

Filed by Joe Calderon of Bose McKinney & Evans LLP.

Present for the Petitioner: Joe Calderon, offices at 600 E. 96<sup>th</sup> Street. A site plan was shown. This 22-acre site is an unusual case. Fifteen plus of the acres are located within the Town of Zionsville boundaries. The boundary line between Hamilton County and Boone County splits the property in the middle of the parking lot. They have been going through two jurisdictions, which have presented a number of challenges. From Carmel's standpoint, the first hurdle was cleared in March in terms of the ADLS. The building lies within the jurisdiction of Zionsville. There is an outlot on the west side of the building to meet Zionsville's requirements that the back of a building cannot face a public street. They had originally purposed a gas kiosk as part of the site plan within the 120-foot maximum front yard in Carmel. That was pulled off the site plan in January. It would have been a struggle to meet the various architectural requirements that are set forth in the Carmel Overlay Ordinance. Sometimes gasoline is not part of the client's business plan or a desired use. They went through TAC and then Plan Commission in February, when the front yard issue was raised for the first time. They tried to mitigate what was raised at that time. They have added a substantial sized gazebo element on the northeast corner of the property. They felt that would meet the requirement of a structure in the front yard. Also part of their plan included the INDOT sidewalks and pedestrian network of walkways on their parcel

and adjoiners, so the gazebo would make sense from the public standpoint. A couple members of the Plan Commission really liked the gazebo and it passed unanimously. Both sections are subject to the US 421 Overlay standards in each jurisdiction. The real issue is that under Zionsville's jurisdiction any building, per their overlay, must face Michigan Road and the back of any building cannot face a public street. Therefore an outlot was created to the rear of the building to meet the Zionsville requirements. That eliminated the ability to create an outlot in the front along Michigan Road. Some thought the building could be moved to the 120-foot line and shift the parking into the back. The way other retailers have handled the building setback was to create outlots. He shared photos of other large retailers on US 421. Essentially outlots were created with smaller individual users. The Super Target is set back probably as far as the proposed Wal-Mart building. The difference is they have a Fifth Third Bank and an Applebee's within the 120 feet. They have the luxury of doing that because they do not have to have anything in the back of their building. The shopping center at the southeast corner of 106<sup>th</sup> and Michigan has a retail center in front. The Marsh development on the northeast corner of 106<sup>th</sup> and Michigan is set back over 200 feet from the Michigan Road right-of-way. There is a Village Pantry on the corner that is approximately 120 to 125 feet. There is a retail center set back farther than 120 feet from Michigan Road. The prevailing development pattern in terms of retail has all been, in order to comply with this requirement, to create outlots up front. The Wal-Mart site does not have the luxury to do that due to the fact that an outlot had to be created in the back. To try to mitigate that, they have put the gazebo for public use in front. Not all of the other properties that have created outlots have been able to fully create lot coverage across the frontage of Michigan Road. Photos taken from the Michigan Road sidewalks were shown. The one of the Super Target was taken between the bank and Applebee's, straight back to the Target. Because of the stringent landscaping standards, he did not feel there would be a sea of parking as the staff report described. They had taken the more stringent buffer standards between Zionsville and Carmel. They have over 2,000 plantings on the site which would offset the concern that staff raised in terms of creating a sea of parking. The point of the photo was to show that even with outlot situations; the 120-foot setback line does not create an urban atmosphere where there is a build-to line or a situation where the frontage of the parcel is completely covered with buildings. Likewise with the Marsh building, there is a side facing on the parcel. They cannot orient the Wal-Mart building to face north or south. Marsh's parking field faces 106<sup>th</sup> Street with a little parking to the side. The west face of the Marsh building is over 200 feet from the Michigan Road right-of-way. A picture was shown of the proposed gazebo which would mitigate the concerns of parking. A landscape rendering was shown. There had been more plantings added that were not on the rendering. The packet had shown a 2500 square foot building, which was minimum size, in the 120-foot setback. That plan would create additional variances. They have a practical difficulty in developing the site. He appreciated the staff comments and they have tried to meet the ordinances. With this client they had tried to find an appropriate site that was zoned correctly and tried to develop it in accordance with the prevailing ordinances. They thought they had done that until they found out it would be a front yard issue. With the additional building, the site would not have onsite retention and that would need another variance or waiver. He had three Findings of Fact that he read into the record.

1. It would not be injurious to the public health, safety, morals and general welfare of the community. It is a general standard. They are providing significant and better landscaping, more pedestrian access than they possibly could if there was another building closer to Michigan Road. In the overall design of their site plan from a traffic standpoint, they have had to create a frontage road connecting their north adjoiner and south adjoiner. That would certainly be enhanced by the granting of this variance. They have made efforts to mitigate by placing a structure within the 120-foot front yard. They are trying to provide something that would be pleasing, good for the general public, providing some shelter, a place to stop

and relax for those who might be running, walking or biking along the pathway that is being built along the Michigan Road right-of-way.

2. Relates to effect of this variance on adjacent properties. He submitted that yet again that the properties to the south and to the north are direct beneficiaries of the frontage road which is set back about 180 feet. To introduce another building could very well change the location of that and create significant changes to future development for those north and south adjoining properties. They think that by allowing this variance and frontage road that they have created in the location proposed, they are enhancing the value of the north and south adjoiners. He had been told that the east adjoiner, Williams Realty which is undergoing a shopping center development across the street, had tendered a letter of support to the Board. In any event, he has had discussions with the west adjoiner. They are supportive of this project. They have also engaged in discussions with the north and south adjoiners. He did not believe they were here remonstrating and that they were fine with the proposal as set before the Board.
3. Probably the most important finding is whether or not the strict application of the Zoning Ordinance will result in practical difficulties for use of this parcel. The parcel has significantly more depth than width. The width ranges between 692 and 728 feet versus depth of 1340 to 1570 feet. So they cannot bring buildings up to the east property line or they will lose their ability because of the additional depth. This property is also subject to another jurisdiction's rules and regulations, including a similar overlay ordinance. The development standards of both the Zionsville and Carmel ordinances render the property difficult to develop because they have to have the outlot for the back of the property rather than the other similarly situated properties south on Michigan Road where outlots are created in front. Not all of the development standards of the ordinance can be met, even if they put a minimum-sized building up front.

He felt these were ample findings for the Board to consider favorably for this variance.

#### Remonstrance:

Organized: Mike Andreoli, an attorney with Andreoli & Jacob, 1393 W. Oak Street, Zionsville, IN. Collectively he and his partner, Mr. Jacob, represent the Timber Ridge Homeowners Association, a residential subdivision in Zionsville, the Wood Haven Subdivision in Carmel, the Downtown Zionsville Merchants Association (35 businesses who organized a remonstrance against the applicant's development plan and plat approval within Zionsville.) They also represent Steve and Vicky Snider of Snider Excavating Development Group (the property adjoining this parcel on the west) and Fanamation in the Bennett Technology Park adjacent to this parcel. They have the common goal to try to assure that there is appropriate planning and zoning in and along the 421 corridor. When an applicant needs a variance, then it is within the Board's purview to determine whether or not this particular proposed project, not just the variance itself, is somehow violable of the public health, safety and welfare of the community. Carmel and Zionsville have adopted Big Box ordinances and that should be a factor in the Board's decision as to whether to grant a variance for a building of this size and structure at that location. Specifically, as it relates to the strict application of the Zoning Ordinance, will it result in practical difficulties in the use of the property? He thought that Mr. Calderon felt there was a practical difficulty, because they cannot get what they want to build. That is not the type of strict application of terms that will amount to practical difficulties in the use of the parcel that the Ordinance was intended to determine. There is no physical impediment to allow the orderly use and development of that property within the confines of the Ordinance. It is only because Wal-Mart cannot locate a building of this size on that particular parcel that they need the Board's help

and the variance. His clients are suggesting that the Planning and Zoning Ordinances of both jurisdictions be met. They did not feel that Wal-Mart could legitimately suggest that the strict application of the terms of the Ordinance would result in a practical difficulty in the use of the property. It will result in a practical difficulty for their attempts to develop this property the way they want to develop it, but not in the orderly use for development of that parcel in any other manner or way. From a commercial standpoint, he felt that a 2 to 1 ratio of depth to width or width to depth was more than sufficient to allow or provide for the orderly development of a property. If a width was five or six to one, that might create some practical difficulties. There are a number of properties along the corridor that have the 2 to 1 width to depth ratio that have found appropriate development on the sites. A practical difficulty is not one of your own making, but is basically attributable to the property itself.

Rick Sharp, 1481 Stormy Ridge Court. He felt there was one item of correction. The Marsh and Village Pantry gave rise to the Michigan Road Overlay Ordinance. They were approved and built prior to the Ordinance. That made the City realize they needed to take steps to control the growth along Michigan Road, because they did not want to end up with another Castleton. He was on the Plan Commission at that time, chairing the Special Studies Committee. They wrote the Michigan Road Overlay Ordinance. The plans the Petitioner presented of the proposed Wal-Mart was the type of development the Michigan Road Overlay was written to prevent. It was not written to prevent the development of Big Box retail, but to control the development of Big Box retail. The others, including the Home Depot, are all effectively screened by out parcels. The other intent was to create a sense of place along the Michigan Road corridor, not have it develop into a commercial sprawl, but to make a streetscape and bring the buildings into some context with people. The idea of using the gazebo that was pictured as satisfying those requirements was ridiculous. Maybe if they looked at the gazebo in front of City Hall, they would have a better chance. The gazebo depicted would accommodate a one-man band concert. He was not surprised that some of the surrounding property owners would probably be supportive, because if the Overlay is abandoned then other property owners will use this property as an example of why they would not have to meet the Overlay requirements. He felt this would be creating a dangerous precedent for the remaining development along the corridor. He felt there was not a problem with the property, but a problem with the desired use of the property. He did not feel the City must approve every desired use. Carmel has had a very long tradition of quality. The reason is because the City has steadfastly been willing to tell the Petitioner that they do not want the project in Carmel. He ask the Board to continue to protect the quality of Carmel, particularly the quality of the Michigan Road Overlay.

Rebuttal:

Mr. Calderon stated that it was not their intention to design something and then come crying to the BZA that they cannot meet the terms of the Ordinance. They had already filed their ADLS and site plan and had a public hearing before this issue came before them. They were on file well before the Big Box Ordinances were adopted in either jurisdiction. There is State legislature that protects that. The building they proposed is a permitted use and the size is permitted and it meets all of the other requirements. The issue is if they can do an outlot development close to Michigan Road in front of the store. They cannot because the outlot is in back of the store for the reasons stated. That is the practical difficulty. There are no other parcels along Michigan Road that are split jurisdiction with a public street in back of their parcel, that have to meet the requirements. If they could orient their building north-south, they could easily meet the 120-foot requirement. They cannot do that because it must face Michigan Road. They cannot have the parking in back because, for business reasons, a large retailer in a suburban district would not do that. More importantly, to have the parking in back, there would be a

direct conflict between the customers and the trucks unloading. They would not want the trucks unloading in front of the building. It is not a hardship standard, it is a practical difficulty standard. He respected Mr. Sharp's comments that the intent of the Ordinance was to create some kind of sense of place. He also mentioned that was what the outlots were doing. None of the other users on Michigan Road have to have something to the rear of the buildings in terms of an outlot. That is the difference between those developments and this development and that is the practical difficulty. They were trying to mitigate the concern with the gazebo. A small 2500 square foot building is not going to give total lot coverage in front of the building. That was why they had significant landscaping so no one would see a bunch of asphalt. It will be a nice attractive setting and the building behind that meets all the architectural standards. It will enhance the quality of life for Zionsville and Carmel.

The Public Hearing was closed.

Mr. Hawkins called for the Staff comments.

Brian Shapiro asked to speak. He felt Mr. Calderon entered some information that was not true. Mr. Hawkins informed him the Public Hearing was closed. A Board member could ask for his comments.

Mrs. Conn gave the Department Report. The Department agreed with Mr. Sharp's statements. Also, the Marsh store was built before the Overlay was created. The Department recommended negative consideration.

Mrs. Torres asked when the 120-foot set back was created.

Mrs. Conn stated that was the Michigan Road Overlay created in 1998. It applied to the whole corridor.

Mrs. Torres asked if outlots in the front would affect the parking requirements.

Mr. Calderon stated that would change the parking ratio that would be required. It would not meet the parking requirements and would have to be redesigned. More importantly, they could not meet the minimum size to create an outlot. Where the approved frontage road is located, if a line was drawn there, it would make it less than three acres. Then they would need a different kind of variance.

Mrs. Torres asked if they had tried to have a variance in Zionsville to eliminate the building in the back.

Mr. Calderon stated they have not applied for any variances in Zionsville. It has been contentious and they have not decided if they will appeal the decision. It is a site plan approval situation and the site is already zoned. If they do not meet it, they are to be told why they did not meet it. They are waiting to see what happens. They felt they could not go before the Zionsville Board and ask for a variance to have the back of the building face the street behind.

Mrs. Torres asked if they could have outlots in front if the building size of Wal-Mart was changed.

Mr. Calderon did not feel the outlots would meet the Carmel minimum tract size. It would be trading one variance for another.

Mr. Potasnik asked if the purpose of the gazebo was to mitigate the setback requirements.

Mr. Calderon stated they had proposed the gazebo voluntarily. They had proposed pedestrian connectivity that was not required by Ordinance and the gazebo would tie in with the pedestrian walkways.

Mr. Potasnik asked if Mr. Calderon had been a part of any other development of Wal-Mart Superstores and if he was familiar with the one on Keystone and 71<sup>st</sup> Street?

Mr. Calderon stated that he had been involved with several in a little more than three years, but the one on Keystone was before that time. He had been involved with the ones in Beech Grove, Lafayette Square area and others in other cities in the state.

Mr. Potasnik wanted to know how far the one on Keystone sets back from the frontage road to the outlots to the west. He was trying to visualize the proposed development.

Mr. Calderon stated it would be a guess, but it was probably several hundred feet.

Mr. Broach wanted to hear what Mr. Shapiro had to say.

Brian Shapiro, 4610 Woodhaven Drive, Zionsville, in Clay Township. He disputed what Mr. Calderon had said about a Wal-Mart not wanting to position close to a road. He shared pictures showing a Wal-Mart built close to a five-lane road in Mission Viejo, California. There were the five lanes and then a buffer area in front of the Wal-Mart building.

Mr. Hawkins asked the function and use of the building in the back.

Mr. Calderon stated that it was about 2,000 to 2,500 square foot building. It was shown just so the Town of Zionsville could see the lot could be developed. It would probably be an office building. In order to go through the platting process at Zionsville, they had to show that the lot could be developed in accordance with their standards for setbacks and parking.

Mr. Hawkins asked about the location of the 2,500 square foot building proposed for the front outlot.

Mr. Calderon stated that it was shown in front on this site plan specifically for this hearing. The difficulty would be that it is less than the minimum tract size. It is not really proposed as part of the site plan.

Mr. Hawkins felt they were trying to do too much on the lot with the building in back and the gazebo in front.

Mr. Molitor asked, for clarification, which minimum tract size Mr. Calderon was referring to.

Mr. Calderon believed it was a three-acre minimum tract size in the US 421 Overlay.

Mr. Molitor stated that was the minimum tract size for a development plan. It does not restrict the size of an outlot. There is no minimum for the outlot as long as it conforms to the development plan that is submitted. An outlot can be transferred or sold off after the development plan is approved, as long as the outlot conformed to the development plan.

Mr. Hawkins asked if the road running north and south parallel to Michigan Road was in position and could not be moved.

Mrs. Conn believed that it was placed by the petitioner as the best way to connect the north and south parcels, if they were ever developed. She did not feel that exact placement was required, but was the best location to connect the north and south parcels.

Mrs. Torres asked Mr. Shapiro if the building he had shown had surface or underground parking.

Mr. Shapiro stated that the California building screened the parking and eliminated the sea of parking.

Mr. Calderon made a point of clarification that Randall Art helped write the Michigan Road Overlay and parts of it came from Dunwoody, Georgia and parts from some of the developments in Southern California that the Board saw.

Mr. Hawkins made a motion in the negative to decline **Docket No. 06030013 V, Wal-Mart (Gateway Pavilion)**. The motion was seconded by Mrs. Torres and **APPROVED 5-0, thereby denying the docket.**

Mr. Molitor recommended that the Board delegate to him to prepare formal Findings of Fact based on suggested findings from the staff and in consultation with the attorney for the remonstrators.

Mrs. Torres moved to have Mr. Molitor prepare the Findings of Fact. The motion was seconded by Mr. Hawkins and **APPROVED 5-0.**

There was a brief recess while Mrs. Torres was away from the dais.

**2h. Congregation Shaarey Tefilla Synagogue**

The applicant seeks the following Special Use approval for a place of worship:

**Docket No. 06030014 SU ZO Chapter 5.02 Special Uses**

The site is located at approximately 3030 W. 116<sup>th</sup> Street and is zoned S-1/Residence within the West 116<sup>th</sup> Street Overlay.

Filed by Joe Calderon of Bose McKinney & Evans LLP.

Present for the Petitioner: Joe Calderon, offices at 600 E. 96<sup>th</sup> Street. Also present were the project engineer Mike DeBoy, DeBoy Land Services and Megan Strait, Peterson Architecture. The site map was shown. The property is ten acres adjacent to, and west of, University High School on 116<sup>th</sup> Street. They propose to build an approximate 17,000 square foot synagogue. A larger site plan was shown with the rendering of the proposed building. In a Special Use situation, they are looking for compatibility with the surrounding uses, existing zoning, street network, etc. They felt this was a complementary use to the existing residential area. The parcel is large enough to accommodate the

building and future growth of the congregation. The major street makes it a good site for the proposed use. The overall site is rectangular. There is significant setback from 116<sup>th</sup> Street. Adjacent uses are the Larkspur Subdivision to the west, Bridlebourne to the south and University High School to the east. They have incorporated, as requested by staff, a multi-use path. They have met all the setback and bufferyard requirements. The parking is on the east side of the property, away from the residential which will mean less light pollution. They were sensitive to lighting concerns. A copy of the landscape plan was shown. They will have 25-foot bufferyards around the perimeter of the property. The drainage plan showed the flow of the site basically to the south with retention close to the southeast corner, away from the residential on the west. One of the challenges with an undeveloped site is coordinating future development plans, especially with University High School growing like it is. There could be an opportunity to have retention offsite in the future. The utility plan was also pointed out and the utilities are available. The main orientation of the building will face to the east due to religious purposes. It is a tasteful building that will be compatible with the adjoining uses. The present location for the congregation is in Marion County. A large number of congregants live in Hamilton County, particularly on the west side. From their standpoint, this is a perfect location. The six Findings of Fact were part of the Board's packet. They had met with staff and TAC and followed their suggestions. He was not aware of any remonstrance. He did receive an email from a couple over the weekend that did not get public notice. He had checked his Hamilton County Auditor's list and they were not on the list. He did send them a packet of information.

**Remonstrance:**

Don Bryenton, 11521 Nicole Court, in Larkspur, adjoining the property. He wanted some clarifications. He stated there were several people who adjoined this property that did not receive notification. He was only aware of two that did receive the notification. They do applaud the petitioner for putting the drive and parking on the east side of the building, away from Larkspur. They had lived next to a house of worship before and knew that one thing that happened was the plans were good, but funding was not always available. The buffer zone and landscaping were nice, but what will be their requirements and timing to make sure that the buffer is developed upfront. Secondly, he wanted to know the long-range plans for the southern portion of the parcel. They were showing a retention basin, but there is a large field that exists between the basin and the residences. He wanted some assurance there would not be parking or lighting in the future.

**Rebuttal:**

Mr. Calderon stated a building expansion area would be to the south. They would need to notice the neighbors before coming to the BZA for approval of any expansion as an amendment to the Special Use. Several members of the congregation were present and could answer the funding question. It was his understanding that the fund-raising would be ongoing. This would probably be a next year project. They could not apply for the building permits without being in compliance with the bufferyards.

Bob Glen, 11647 Oak Tree Way, Chair of the Building Committee. The plan is to work with University High School to use their dirt from their new construction for the berm and buffer between the congregation and Larkspur. The funding will include the landscaping. There should be no time difference from the completion of the building other than weather conditions and plant availability. He believed they had six months from the completion of the project to get the planting done. But they plan to landscape immediately.



Mr. Calderon stated that for the notice issue, they had gotten the certified list from the Hamilton County Auditor's Office. He doubled checked his list and all the certified mailings that went out matched the list. He believed they complied with the notice requirements.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The site lies within the newly adopted 116<sup>th</sup> Street Overlay that requires a 100-foot front yard. Since it did complement the residential uses and the high school use, the Department recommended positive consideration with the dedication of road right-of-way and proper placement of the ground sign off that right-of-way.

Mr. Broach asked about a berm along Larkspur with the 25-foot planting strip.

Mr. Calderon confirmed there would a berm within the 25-foot planting strip if it pleased the Board and the neighbors.

Mr. Broach asked if it was practical, could they put the berm in before they started building? He also wanted to know about the loop that looked like a turn around.

Mr. Calderon did not know if the berm would impede running the utilities, but they would try to accommodate the neighbors and would work with them.

Megan Strait, 12130 Royalwood Court, Fishers, IN. She stated the loop in the back was to the entrance in the back of the building for the kitchen and gymnasium and deliveries to that area.

Mrs. Torres wanted a commitment for a six-foot berm.

Mike DeBoy, offices at 501 S Ninth Street, Noblesville, IN. He stated they were looking at 3-foot berms, because they would have to be careful to not trap water on the other side and also the issue of maintenance of the bufferyard area.

Mr. Bryenton wanted to know how tall the berm would be. A three-foot berm would give the trees a boost. He was concerned about the garbage truck coming early in the morning. The building would provide a sounding board for the noise from the truck. A tree berm could provide a noise buffer. There are drainage issues with the lot. Larkspur drains to a retention basin at the south end. They will need a drainage corridor to separate Larkspur from the synagogue's property.

Mr. Hawkins assumed drainage issues had been addressed with the current plan. He did not want the Board to require a berm that would adversely affect Larkspur.

Mr. DeBoy stated that the general drainage of the project would be from northwest to southeast. University High School has been required to provide a drainage outlet at the approximate southeast corner. The pattern of the drainage is fairly flat, but it does have a tendency to fall in that direction. For the berm issues, they anticipate using a swale or sub-surface drains that will go under the berm to pick up the water and take it back to the main drain. They do not want to trap water and create a problem for the neighbors or the property.

Mrs. Conn stated that the Department would be in favor of the berm as long as it had no adverse effects. The Petitioner could come back with a revised drainage plan or it could be approved contingent upon a positive drainage plan.

Mrs. Torres moved to approve **Docket No. 06030014 SU, Congregation Shaarey Tefilla Synagogue, including the berm as long as there is no adverse effect.** The motion was seconded by Mr. Broach and **APPROVED 5-0.**

### **3-4h. Holy Trinity Greek Orthodox Church**

The applicant seeks approval for the following Special Use and Development Standards Variance approvals:

<b>Docket No. 06040011 SU</b>	<b>ZO Chapter 5.02</b>	<b>Special Uses</b>
<b>Docket No. 06040012 V</b>	<b>ZO Chapter 5.04.01</b>	<b>Building Height</b>

The site is located at the northeast corner of 106<sup>th</sup> St. and Shelborne Rd. and is zoned S-1/Residence. Filed by Larry Kemper of Nelson & Frankenberger.

Present for the Petitioner: Larry Kemper of Nelson & Frankenberger. Present from the congregation were Father Taso, Dennis Dickos, Tony Philis. Shaun Ryan from Weihe Engineers and Christ Kamages, the architect, were also present. Holy Trinity Greek Orthodox Church is the oldest Greek Orthodox Church in Indiana, incorporated in 1910 and originally located in Indianapolis on West Street where the Indiana State Historical Museum now stands. In 1960, the parish moved to the northeast corner of 40<sup>th</sup> and Pennsylvania Streets in Indianapolis. They have often shared their facilities with neighborhood groups. Due to changes in demographics of the parish and parishioners, the church purchased 20 acres of land in 1998. The southern boundary of the property is 106<sup>th</sup> Street and the western boundary is Shelborne Road. The residential uses surrounding the property are English Oaks to the north and to the east is a large estate residential property. Huntersfield Subdivision is to the south, to the west is Fire Station #42 and a Mormon Church is to the northwest. A site plan for the church was shown. They propose to construct the church in two phases. The two phases were pointed out on the site plan. They propose to begin construction on Phase 1 immediately. Phase 1 will consist of 39,500 square feet which will include the sanctuary and worship areas, administrative offices, nursery and kindergarten rooms, a library and meeting rooms. The sanctuary will seat a congregation of 500. The parking for Phase 1 will be located primarily along 106<sup>th</sup> Street. The two entrances are proposed off 106<sup>th</sup> Street and Shelborne Road. Only the entrance off 106<sup>th</sup> Street will be constructed with Phase 1. The entrance off Shelborne Road will be added with the construction of Phase 2. Phase 2 will consist of approximately 25,600 square feet and will comprise of large and small meeting halls, a kitchen and storage areas. The church anticipates construction of Phase 2 in 5 to 15 years. That will be a matter of finances. They will have a large retention pond along Shelborne Road and another wet retention pond in the southeast corner of the site. There will be extensive landscaping along the perimeter in compliance with Class D in the Carmel Ordinance. The site plan did not show the complete buffering that continues along the eastern perimeter. They have met with Scott Brewer and have come to an agreement regarding the buffering and landscaping in that area. The church held a neighborhood meeting and the neighbors attending were primarily from English Oaks and the neighbor to the east with the large estate property also attended. At the neighborhood meeting, the primary concerns were with regard to drainage and buffering. The drainage situation should be improved with the construction and improvements to the site. Some neighbors to the north expressed a desire for additional buffering as well as removal of some parking spaces. Consequently, they revised the site

plan and eliminated about 17 parking spaces. They also agreed to include a three to four-foot berm adjacent to the turn-about area on the north edge of the parcel. They agreed to plant Norway spruce trees that were 8 to 10 feet in height to provide maximum screening year round. This was specifically a request of the O'Neil's who are adjacent to the area. Since the neighborhood meeting, they had been in contact with the O'Neil's for the last several weeks. One other communication they had received was a letter from Judy Hagan, the Township Trustee, about connectivity to the perimeter path. They have revised the plans and included more connecting paths. (He pointed them out on the site plan.) The Church requested that they only be required to include two connecting paths with the construction of Phase 1. The other paths would function with Phase 2. If they were installed with Phase 1, they would need to be torn out to complete the construction of Phase 2. An artist's rendering was shown of the church after the construction of Phases 1 and 2. The proposed church will be Byzantine-style architecture, which is visually appealing and will be unique to this area. The nationally renowned architect, Christ Kamages, with CJK Design Group in San Francisco, created this design. He has similar projects around the country. One of the prominent architectural features is the dome which exceeds 35 feet. A few other portions of the church exceed the 35 feet which is the maximum building height under the S-1 Zoning Classification. An illustration was shown with the varying heights of the building and the portions which exceed the 35-foot requirement. The lesser dome and other features exceed the 35 feet by no more than 5 feet. The primary dome will be 65 feet with a cross on top that would be a maximum of 10 feet, making the total height 75 feet at the highest point. The dome will be an internal open area which is not capable of being occupied. Within the context of the structure, the height of the dome is proportional. The building sets back significantly from the boundaries of the property.

Christ Kamages, 594 Howard Street, San Francisco, CA. One of the interesting issues when considering the architecture for an Orthodox Church is the theology that goes back 2000 years and an architectural tradition that goes back 1400 years. The distinguishing feature of Byzantine architecture and the Orthodox Church architecture is the dome. The dome is a circle and the circle has a lot of interesting geometric, physical and theological meanings. The dome represents eternity; there is no beginning and no end. The Orthodox Church sanctuary will face in an easterly direction towards Jerusalem, the rising sun and the New Zion. The dome is also a source of light which is God's light touching everyone inside the worship space. From an external representation, the dome is also a crowning glory. The interior is a representation of heaven. Pictures of Byzantine churches were shown. The various levels are a progression of stepping up. The dome will be proportional with the building.

Mr. Kemper summarized. Construction of the proposed church is very important to the Greek Orthodox Church and it will not be injurious to public health, safety and welfare. The use and values of the adjacent properties will not be adversely affected, as the church is a less intense use of the property. It is complementary to the surrounding properties. The Church is a proposed benefit to the community as a whole as it provides architectural diversity. If the variance is denied, the Church will be denied the opportunity to construct the Byzantine structure which is very important and relevant to the Orthodox service. The variance for height is not unique as several others have been granted within the Carmel community.

**Remonstrance:**

Joe O'Neil, 10726 Stratton Circle, in English Oaks. His family lives at the north border of the church parcel. From their south windows, they have a view of the parcel, including the northern driveway and parking area and will be impacted by the construction. The English Oaks common area on the south of

the subdivision is used by many children. They are requesting certain conditions be imposed on granting the Special Use application to reduce the impact on their property. A site plan was shown indicating their home site. They have met with the attorneys for the church and indicated the plan changes that would minimize the impact of the church on their property value. The conditions are:

1. Limit parking lot #2 to 17 spaces.
2. Construct a 3 to 4-foot berm, approximately 20 to 25 feet wide, and approximately 150 feet long along the north property line during Phase I construction.
3. No improvement/construction zone between the berm and English Oaks Subdivision boundary.
4. 8-foot Norway spruce or Canadian hemlock on top of berm on 15-foot centers plus 8-foot ornamental trees, all mulched.
5. Brick trash dumpster area on Phase I enclosed with gates facing away from English Oaks Subdivision.
6. Outdoor lighting will be minimized with low wattage bulbs and in a position that does not shine toward their property. Any free-standing outdoor lighting in the northern parking lot will be limited to 12 feet in height.
7. Tall hedge shrubs, such as arborvitae, on the north edge to block car headlights before parking lot is in use.
8. Preservation of existing trees within the English Oaks common area within 10 feet of the property line (where some tree branches may extend onto the church property). If any die within the first year, they should be replaced with like trees.

They feel they are the most impacted lot in English Oaks.

The Public Hearing was closed.

Rebuttal:

Mr. Kemper stated they had been in communication with the O'Neil's, primarily by email. They have met most of the concerns. They have eliminated the 17 parking spaces and included a three to four-foot berm with 8 to 10-foot Norway spruce or hemlock. They also agreed to stagger the plantings of these trees with the ornamental trees. He had not been aware of a couple of the requests. They are already doing the shoebox lighting which complies with Carmel's Ordinance and there will be no light spillage onto adjacent properties. He thought the light poles were 15 feet in height, but they were taking measures to eliminate light spillage. He felt they were primarily concerned with the lighting in the north parking area in Phase 2 which may not be in place for 5, 10 or 15 years. From the northern façade of the Phase 1 structure, it is about 125 feet to the property line, plus another 75 feet to the southern elevation of the O'Neil's home. Until Phase 2 is constructed, there will be significant open space buffering the property. In addition, they will have the mounding and the plantings as per their request and as approved by the City Forester. He was not sure where Mr. O'Neil wanted the tall hedge shrubs planted. The 25-foot buffer area does not leave room for any additional plantings once Phase 2 parking is installed. He did not know how they could meet that request. They will also preserve any and all trees on site that they can. Construction might require them to move and relocate trees. The O'Neil's are concerned about the parking and there will be a 3 to 4-foot berm which will screen most headlights from cars and SUV's. By the time that area is constructed, the trees, which are fast growing, should provide additional buffering for the headlights. The church did purchase this property in 1998 which was before most of the neighbors purchased their properties. The developer, Craig Von Deylen, indicated they had made a point of disclosing to the neighbors, at the time they bought lots, that the church did own the property to the south and someday there would be a church on the property.

Mrs. Conn gave the Department Report. This item had gone before the Technical Advisory Committee which addressed all technical issues. The Comprehensive Plan does state that a place of worship is a complementary use to a residential area. The Department recommended positive consideration of both dockets with the condition that the right-of-way is dedicated. They did have an updated landscape plan.

Mr. Kemper stated they had no problem with the right-of-way issue and have revised the site plan to accommodate that. They had resolved landscaping issues with the City Forester.

Mrs. Torres knew that Phase 2 would not take place for quite a while, but wondered if it would be more beneficial for the traffic flow to put in the two turn lanes coming out onto Shelborne when that entrance is constructed, as they were doing onto 106<sup>th</sup> Street. For a reference, she wanted to know the height of the towers in Coxhall Gardens. She wanted to confirm that the mounding and buffering would occur in Phase 1.

Mrs. Conn stated the towers in Coxhall Gardens are 80 to 90 feet.

Mr. Kemper stated that all the perimeter landscaping would be installed with Phase 1.

Mr. Broach felt they had done a good job of addressing all the neighbor's concerns. He wanted to clarify the trash receptacles.

Mr. Kemper pointed out the dumpster location in the diagram and the manner in which they would be enclosed.

Mr. Hawkins asked if they would be approving Phase 2 at this time, or would the Petitioner need to come back for Phase 2 approval.

Mrs. Conn stated that tonight's approval would be for Phase 1 and Phase 2. If the congregation decided to expand more than what was proposed for Phase 2, they would need the Board's approval.

Mr. O'Neil asked about the trash receptacle in Phase 2.

Mr. Kemper stated there was one primary location. Everything else that was shown would be mechanical areas.

Mrs. Torres moved to approve **Docket Nos. 06040011 SU and 06040012 V, Holy Trinity Greek Orthodox Church with dedication of right-of-way and all commitments stated.** The motion was seconded by Mrs. Plavchak and both dockets were **APPROVED 5-0.**

Mr. Broach recused himself.

**5h. Martin Marietta - Scale House**

The applicant seeks the following Use Variance approval:

**Docket No. 06040019 UV      ZO Chapter 5.01      Permitted Uses**

The site is located at 10851 Hazel Dell Pkwy and is zoned S-1/Residence.

Filed by Zeff Weiss of Ice Miller LLP for Martin Marietta Materials.

Present for the Petitioner: Zeff Weiss, attorney with offices at 3400 One American Square. John Tiberi, Martin Marietta, was also present. The site was shown. The site is located on the east side of Hazel Dell Parkway which was recently mined with sand and gravel. With Docket No. UV 23-02, they relocated the Carmel Sand Plant from the west side of Hazel Dell Parkway to the east side. The relocation necessitated the moving of a scale house, which is where the truck drivers weigh their trucks before and after loading. He felt the scale house was part of the overall sand plant. The structure in question is a single-family home located on the property, sitting on about 2 acres. He indicated the location on the site plan. The structure is a one-story, 1600 square feet residential-looking structure. They are planning to have the business office for the Carmel Sand Plant in the house. There will be no external changes to the structure. There will be some additional landscaping which he showed. There will be a sign at the entryway which will require a sign permit. This proposal is not contrary to the public interest. It is consistent with relocating the Carmel Sand Plant. Moving the scale house here will avoid the necessity to run the trucks back and forth across Hazel Dell Parkway. There will be less conflicting traffic and less noise to the neighbors. It is a good use of the existing structure. Since the sand plant has been relocated next to it, it would not make sense to use the structure for residential purposes. This proposal will not be injurious to the public health, safety and welfare of the community. It will reduce general traffic as well as cross traffic and there will no noise or adverse affects to anybody who resides in the area. There is no adverse effect on the adjacent land values. It will enhance the adjacent values by moving the activity further away. This structure sits by itself along Hazel Dell Parkway. The need arises due to a natural condition. This is peculiar because this structure sits alone and is not part of the neighborhood. It is now adjacent to the Carmel Sand Plant and this would be an appropriate use. This does not interfere with the Comprehensive Plan. It is located in the S-1 District and that use is permitted with a Special Use Exception that was approved under UV 23-02. Procedurally they went through TAC and there were no questions ask in terms of anything they were doing. There was a little clarification as to why the sand plant was going there and whether they were going to make any physical changes. They will deal with the landscaping and take out any dead trees, per Scott Brewer's suggestion. A landscaping plan was shown and Mr. Weiss described changes off-mike. There was a question from the Staff about commitments. After discussion, it was decided there was no need for commitments because there is nothing that is going to happen on this property other than office activities during the business hours of the sand plant.

Remonstrance:

Bart Caylor, 116 White Horse Lane, Fishers, across the river from the Hazel Dell Landing Park which is adjacent to the scale house. He wanted clarification of the hours of operation. There had been construction at the plant until midnight and 2:00 am with lights and beeping from the backing of the equipment. He wanted to know if there would be additional buffering between the scale house and the park.

Brian Atkinson, 115 White Horse Lane, Fishers. With the hours of operation, it made sense to move the scale house next to the processing plant. They were not in favor of the processing plant coming closer to them. It is quite a bit noisier than it used to be. The main issue is that the processing plant has its own noises and the scale house will have more noise with the trucks coming in and backing up. Their house is directly across the river and the beeping noise comes right to their house. If there was a way for the trucks to only go forward, it would certainly be appreciated by the neighbors. Maybe evergreen trees would help mitigate the noise in the winter and the summer.

The Public Hearing was closed.

Rebuttal:

Mr. Weiss wanted to clarify that this petition was for the operation of the scale house alone. The issues brought up by the remonstrators relate to the operation of the sand plant. The commitments that were entered into with the relocation of the sand plant allowed for the operation of the plant from 6:00 am until 9:00 pm, Monday through Friday and 8:00 am to 2:00 pm on Saturday. The weighing and loading out of materials are limited to 6:30 am to 6:30 pm and 8:00 am to 2:00 pm on Saturday. The trucks do move around, without having to back up, for the purpose of ingress and egress at the site. However, they do back into the plant where the materials are loaded. But they would not hear that sound generally outside of those hours. The plant can operate longer, but loading in and out is more limited. For the scale house, they have not limited the hours. They do not anticipate working beyond a half hour before and a half hour after the plant is operating. Because the activity is all inside as office, they did not see any reason to limit it. They would not hear anybody coming and going, it would only be the lights in the house. There are not going to be any large lights outside.

Inaudible conversation with the remonstrators.

Mr. Weiss reported that the trucks will come in off Hazel Dell, weigh themselves, not on the scale house site but adjacent to it at the plant. They will load up, come back and weigh themselves and then head out, unless there is a problem with being overloaded. They would get out at the scale house, go inside for their paperwork and come back out to their truck.

Mrs. Conn gave the Department Report. This area is surrounded by mining. The area surrounding the site is also in the flood plain. The Department recommended positive consideration of the docket.

Mrs. Torres asked where the trucks were currently being weighed.

Mr. Weiss thought they were still being weighed across the street. They were using a temporary scale as well as the original scale on the west side.

Mr. Hawkins asked if they had any intent of using the scale house longer than mining in that area or should they put a time limit on the scale house in conjunction with the mining which could last as long as 23 years. He did not want to see material being trucked in after mining was completed at the Carmel location. Since transportation was one of their largest expenses, he did not think it would be economically feasible. He wanted to tie the scale house to the mining or the processing plant, so that they would expire at the same time.

Mr. Weiss conferred with Mr. Tiberi. They did not think it would be there longer than the processing plant was in operation. It would depend on the stone and resources. Mr. Weiss reminded the Board that in the Carmel Sand Plant relocation, there was no prohibition in terms of bringing material in to process. He did not know if they would be opposed to tying the variance for the scale house to the sand plant operation. He did not want to backdoor the issue of whether or not the sand plant could stay there when they were out of sand and gravel at this location.

Mr. Molitor thought he had heard the Petitioner say they did not have any problem tying the scale house with the processing plant. Maybe they would be willing to make the commitment that the scale house use would expire when the processing plant was no longer in operation.

Mr. Weiss said they would have no problem with making that a condition that they could no longer use it, maybe 12 months after the sand plant was no longer adjacent.

Mr. Hawkins told Mr. Atkinson and Mr. Caylor that unfortunately their comments, though very relevant, did not apply to the scale house. Therefore, there was not a lot the Board could do. When Martin Marietta applied to move the sand plant, it would have been the appropriate time. Unfortunately, since they live on the other side of the river, they probably did not receive notification of that meeting.

Mrs. Torres asked if Martin Marietta was operating the plant out of hours or not abiding by the hours, who should the citizens call?

Mrs. Conn stated they could call the Department, 571-2417, and talk to her or Kevin Brennan, the Code Enforcement Officer.

Mrs. Torres moved to approve **Docket No. 06040019 UV, Martin Marietta – Scale House, as amended** that the scale house can exist up to 12 months after the sand processing plant ceases operation. The motion was seconded by Mr. Hawkins and **APPROVED 4-0.**

**6h. TABLED**

**~~Stonegate Apartments off-premise sign~~**

~~The applicant seeks approval for the following development standards variance:~~

**~~Docket No. 06020018 V — ZO Chapter 25.07.01-04 — off-premise sign in road right of way~~**

~~The site is located just north of Meadow Lane & Main Street and is zoned R-4/Residence.~~

~~Filed by Larry Kemper of Nelson & Frankenberger.~~

**I. Old Business**

There was no Old Business.

**J. New Business**

There was no New Business.

**K. Adjournment**

Mrs. Torres moved to adjourn. The motion was seconded by Mr. Hawkins and **APPROVED 4-0.** The meeting adjourned at 8:45 PM.

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James R. Hawkins, President

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Connie Tingley, Secretary